

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD SETH TRZASKA, A/K/A
SETH E. TRZASCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71903

FILED

OCT 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Edward Seth Trzaska appeals from an order of the district court denying a motion to modify or correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Trzaska argues the district court erred in denying his March 21, 2017, motion to modify or correct an illegal sentence. In his motion, Trzaska argued the district court lacked jurisdiction to adjudicate him a habitual criminal because the notice the State filed indicating its intent to pursue the habitual criminal enhancement erroneously listed an incorrect prior felony. Trzaska failed to demonstrate he was entitled to relief.


The record demonstrates the notice contained two valid prior felonies and the State presented proof that Trzaska had been convicted of six prior felonies at the sentencing hearing. As the district court sentenced Trzaska pursuant to the small habitual criminal enhancement, the State only needed to allege and prove that Trzaska had been convicted of two prior felonies and the State performed those actions. See NRS 207.010(1)(a). Accordingly, Trzaska failed to demonstrate the district court relied on

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Trzaska also failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. *See id.* Therefore, we conclude the district court did not err in denying Trzaska's motion.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Edward Seth Trzaska
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²Trzaska also claimed his trial and appellate counsel were ineffective for failing to raise claims asserting the notice the State filed indicating its intent to pursue the habitual criminal enhancement erroneously listed an incorrect prior felony. However, claims of ineffective assistance of counsel are not within the scope of a motion to modify or correct an illegal sentence. *See id.* Therefore, the district court properly denied relief for these claims.

³We have reviewed all documents Trzaska has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Trzaska has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.